

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4078 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DYSHYANTRAI VINAYAKRAI

MAJMUDAR

Versus

JAYAPRAKASH MANDANLAL

CHAUDHARY

Appearance:

MR RAVINDRA SHAH for Petitioner

MR TUSHAR MEHTA for Respondent No. 1

MR BS PATEL for respondent No.2.

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 13/06/97

ORAL JUDGEMENT

Rule. Mr Tushar Mehta waives service of rule on behalf of respondent No.1 and Mr B.S.Patel waives service of rule on behalf of respondent No.2. With the consent of the learned counsel for all the parties, the petition has been taken up for final hearing today.

2. This petition is directed against the interim

order of the Gujarat State Co-operative Tribunal allowing the interim injunction application in Revision Application No.80 of 1997 filed by respondent No.1 herein (original plaintiff) against the interim order dated April 29, 1997 passed by the Board of Nominees in Lavad Suit No.1289/96 dismissing the plaintiff's interim injunction application. In the aforesaid suit, the plaintiff has prayed that the present petitioner has no right to put up multistoreyed building on the land in question during the pendency of the suit. Interim injunction application was also filed with a prayer to restrain the present petitioner from putting up construction on the plot in question. By its aforesaid judgment and order dated April 29, 1997, the Board of Nominees dismissed the interim injunction application. Aggrieved by the said order, respondent No.1 has preferred the above revision application. The Tribunal has granted interim injunction during the pendency of the revision application directing the present petitioner to maintain status quo as regards the construction in question. The present Special Civil Application is filed for challenging the aforesaid interim order passed by the Tribunal.

3. The learned counsel for the petitioner has submitted that the apprehension entertained by the present respondents that the petitioner is going to put up multistoreyed building for commercial purposes is without any basis and that as a matter of fact, the petitioner has submitted plans to the Baroda Municipal Corporation for constructing flats in a four storeyed building (ground floor plus three floors). It is submitted that the said plans have been approved and all the units in the said building are residential flats and shall be permitted to be used as residential flats only and not for any commercial purpose. It is, therefore, submitted that the objections being raised by the respondents against construction of the flats in question are without any basis and are not sustainable in law.

The learned counsel for the petitioner has further submitted that in case of another member Madhurikaben, similar facts were there, but the respondent Society has permitted her to construct flats of similar dimension in a four storeyed building (ground floor plus three floors). It is also pointed out that construction of flats put up by Madhurikaben is already over and the said flats are also occupied at present. The learned counsel for the petitioner has also submitted that the petitioner is prepared to proceed with the final hearing of the revision application on July 2, 1997 and that the

petitioner will not pray for any adjournment, but the interim injunction granted by the Tribunal is requested to be stayed and set aside as the petitioner is being put to unnecessary and avoidable loss and hardship. The petitioner has already demolished the old tenament. Once the flats are constructed, then the petitioner will get one flat for his residence.

4. On the other hand, Mr B.S.Patel for respondent No.2 Society and Mr Tushar Mehta for respondent No.1, original plaintiff, have submitted that the Society has a right to refuse to grant any such permission as, according to the Society, the land belongs to the Society and no member has any right to put up any construction except with the permission of the Society. It is further submitted that on one plot of the Society, there can be only one member and not more than one member. The learned counsel also submitted that they are not admitting the contentions sought to be raised by the petitioner by reference to the case of Madhurikaben and that there might have been some illegality in the case of Madhurikaben, but the Society may not like to repeat the illegality in the case of the petitioner.

5. Having heard the learned counsel for the parties, I am not expressing any opinion on the merits of the controversy sought to be raised in the petition as the Tribunal is already seized of the revision application and the final hearing of the revision application is fixed on July 2, 1997. However, looking to the balance of convenience and in view of the fact that if the petitioner is restrained from putting up any construction which has already proceeded upto plinth level on the ground floor as submitted by the petitioner, the petitioner will suffer not merely escalation in the cost of construction and delay in his returns but also personal difficulties since the petitioner has already demolished the old construction on the plot in question, it would be just and proper to set aside the interim order dated May 26, 1997 passed by the Tribunal and to direct that any construction which the petitioner puts up on the plot in question shall be subject to the result of the revision application.

One important aspect which has weighed with the Court in passing the order at this stage, notwithstanding the fact that the order under challenge is an interlocutory order and that the Tribunal has already fixed the final hearing of the revision application on July 2, 1997, is that the petitioner had already earlier demolished his old house and the petitioner is constructing, inter alia, two flats

on the ground floor of the plot in question and one of them is going to be occupied by the petitioner himself.

6. The learned counsel for the parties have agreed that their respective counterparts before the Tribunal will not pray for any adjournment. The Tribunal will, therefore, proceed with the final hearing of the revision application on July 2, 1997. It is clarified that the observations made in this order are for the limited purpose of deciding this petition.

7. In view of the aforesaid discussion, the petition deserves to be allowed. The judgment and order dated May 26, 1997 passed by the Tribunal in Revision Application 80 of 1997 is hereby set aside. The Tribunal shall, however, proceed with the final hearing of said Revision Application on July 2, 1997.

Rule is made absolute accordingly with no order as to costs.

13.6.97. (M.S.Shah, J.)

(vjn)